**BEFORE THE APPEALS BOARD**
**FOR THE**
**KANSAS DIVISION OF WORKERS COMPENSATION**

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| **REXANN DAVIDSON** | ) | |
| Claimant | ) | |
| VS. | ) | |
| | ) | Docket No. 210,158 |
| **MEADOWBROOK LODGE NURSING HOME** | ) | |
| Respondent | ) | |
| AND | ) | |
| | ) | |
| **ZURICH AMERICAN INSURANCE COMPANY** | ) | |
| Insurance Carrier | ) | |

## ORDER

Respondent appealed Administrative Law Judge Jon L. Frobish's February 11, 2000, preliminary hearing Order.

## ISSUES

The Administrative Law Judge granted claimant's preliminary hearing request for an order requiring respondent to either lease or purchase a handicapped-accessible van to transport both an electric scooter and wheelchair. Additionally, the Administrative Law Judge ordered respondent to furnish claimant with a ramp for the van to accommodate the electric scooter along with the payment of the license plate transfer fee, additional yearly property tax cost, and additional yearly motor vehicle insurance cost of the van.

On appeal, respondent contends the Administrative Law Judge exceeded his jurisdiction by ordering the respondent to provide claimant with a van and the miscellaneous additional costs. The respondent argues that providing a motor vehicle for claimant does not constitute "medical treatment" as provided either by statutory or case law in Kansas.

Conversely, claimant contends, because claimant has difficulty ambulating, the van is needed to transport an electric scooter and a wheelchair that claimant is required to use because of the severe pain in her lower extremities. Claimant argues she has proven through doctor's medical reports, admitted into evidence at the preliminary hearing, that

the handicapped-accessible van is “medical treatment” as defined in the Workers Compensation Act.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering arguments contained in the parties' briefs, the Appeals Board concludes that the Administrative Law Judge's preliminary hearing Order should be reversed.

This is not an appeal from a request for post-award medical treatment. The final award has not been entered in this matter. This is an appeal to the Appeals Board from a preliminary hearing which occurred as a result of the claimant filing an E-3 Application for Preliminary Hearing on June 29, 1999.

Therefore, in order for the Appeals Board to have jurisdiction to review this preliminary hearing Order, the appealing party had to allege that the Administrative Law Judge exceeded his jurisdiction in granting or denying the relieve requested[1] or one of the disputed issues listed in K.S.A. 1999 Supp. 44-534a had to be raised.

K.S.A. 1999 Supp. 44-534a authorizes the Administrative Law Judge to make decisions regarding the furnishing of medical treatment and payment of temporary total disability compensation. On appeal, the respondent has not raised one of the jurisdictional issues listed in K.S.A. 1999 Supp. 44-534a. But the respondent has alleged that the Administrative Law Judge exceeded his jurisdiction by ordering the respondent to purchase a new handicapped-accessible van and to pay other miscellaneous costs associated with the ownership of the van. Accordingly, if the van is "medical treatment" then the Administrative Law Judge had authority to enter the preliminary hearing Order, and the Appeals Board does not have jurisdiction to review the issue on appeal and the appeal should be dismissed. If the van is not "medical treatment" then the Administrative Law Judge was without jurisdiction to enter the preliminary hearing Order, and the Appeals Board does have jurisdiction to review that issue.[2]

Both parties rely on the Hedrick case in support of their arguments. The claimant in Hedrick made a post-award request for the respondent to purchase her a larger car to accommodate her injured hip. Claimant made this request by filing an Application for Preliminary Hearing. The Administrative Law Judge granted claimant's request to pay the difference between claimant's small car and the purchase of a larger car. The letter from claimant's treating physician was admitted into the preliminary hearing record and stated the following:

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[1] *See* K.S.A. 1999 Supp. 44-551(b)(2)(A).

[2] *See* Hedrick v. U.S.D. No. 259, 23 Kan. App. 2d 783, 784, 935 P.2d 1083 (1997)

> This lady, following successful Total Hip Replacement, has reached the stage where she is ready for independence in the activities of daily life.
>
> For independence in transportation, she needs a vehicle into which she can climb safely, which can be effected either with a fairly large vehicle, or a tiltable steering wheel. Her old vehicle is very small, had a small door, and a steering wheel which cannot be tilted.[3]

The Appeals Board dismissed the appeal, finding it did not have jurisdiction to review an award of medical treatment from a preliminary hearing order. But the Court of Appeals held the purchase of a larger car was not "medical treatment" and the Appeals Board erred in dismissing the appeal.[4] The Court of Appeals further held, because the purchase of a larger car was not "medical treatment", the Administrative Law Judge exceeded her authority in ordering the respondent to reimburse claimant for her trade-in costs.[5]

Here, claimant suffers from peripheral neuropathy in her lower extremities secondary to INH toxicity. Because claimant suffers from severe pain in her lower extremities, she requires a wheelchair and an electric scooter for mobility. One of her treating physicians, James R. Hay, M.D., in a May 20, 1999, letter, stated:

> I believe it to be medically reasonable and prudent that, given the amount of pain that you have, especially with ambulation, that an electric scooter and a handicapped-accessible van would be medically indicated in your specific case. . . . Therefore, I believe that any modality, such as a scooter or a van that allows you increased accessibility to the outside world, while diminishing your pain, is reasonable and prudent.

Philip R. Mills, M.D., had also examined and evaluated the claimant. In a letter dated October 5, 1999, Dr. Mills stated:

> RexAnn Davidson has received a recommendation for a scooter or van. This would provide comfort for her and in no way would it be contraindicated medically.
>
> In response to your specific question as to whether the van or scooter would provide a permanent cure or relieve, unfortunately, they would not be expected to do so.

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[3] Hedrick, 23 Kan. App. 2d at 784.

[4] Hedrick, 23 Kan. App. 2d at 786.

[5] Hedrick, 23 Kan. App. 2d at 788.

Respondent argues the Hedrick case is controlling and medical treatment does not include the purchase of a van.[6] Additionally, respondent contends that, although Dr. Hay recommended claimant have a handicapped-accessible van, this does not make the purchase of a van "medical treatment" under K.S.A. 44-510a. It is not reasonable to conclude that any expense recommended by a doctor is considered "medical treatment".[7]

The claimant, on the other hand, argues that the Court of Appeals qualified it's holding in Hedrick by noting that the Hedrick case does not involve a paraplegic claimant who seeks specially equipped vehicle under the Workers Compensation Act.[8] Claimant contends that because her problem is the inability to ambulate then her condition is similar to the problem of a paraplegic. Therefore, the handicapped-accessible van is "medical treatment" because it is necessary to transport both the wheelchair and the electric scooter to provide claimant with the necessary means to move from place to place.

The Appeals Board has previously had an opportunity to address the issue of whether the purchase of a handicapped accessible van is considered "medical treatment" under the Workers Compensation Act. In Butler v. Jet TV, WCAB Docket No. 106,194 (April 1998), the claimant, who had lost the use of his lower extremities in a work-related accident, requested certain modifications to a recently purchased home and a handicapped-accessible van. This was a post-award medical treatment request. After discussing the Hedrick case, the Appeals Board held "the van itself is not medical treatment or a medical apparatus, and, therefore, cannot be ordered paid by respondent." But the Appeals Board went on to hold "the costs associated with making the van handicapped accessible, however, do fit the definition of medical apparatus."

The Appeals Board, therefore, concludes Administrative Law Judge Jon L. Frobish's February 11, 2000, preliminary hearing Order should be reversed, and claimant's request for the purchase of a handicapped-accessible van and payment of other miscellaneous costs associated with the purchase of the van is denied.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Administrative Law Judge Jon L. Frobish's February 11, 2000, preliminary hearing Order is reversed and claimant's request for the purchase of a handicapped-accessible van and payment of other miscellaneous costs associated with the purchase of the van is denied.

**IT IS SO ORDERED.**

Dated this ____ day of June 2000.

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[6]Hedrick, 23 Kan. App. 2d at 786.

[7]Hedrick, 23 Kan. App. 2d at 788.

[8]Hedrick, 23 Kan. App. 2d at 788.

BOARD MEMBER

c: Roger A. Riedmiller, Wichita, KS
Wade A. Dorothy, Lenexa, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director